

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION

ERIC BRENDAN CARLE, ) Case No. EDCV 10-765-JFW (AJW)  
)  
Petitioner, )  
)  
v. ) MEMORANDUM AND ORDER  
) DISMISSING PETITION  
BRENDA M. CASH, ) WITHOUT PREJUDICE  
)  
Respondent. )  
\_\_\_\_\_  
)

Petitioner filed this petition for a writ of habeas corpus, presenting three claims for relief. [Petition at 5-6]. On June 2, 2010, the Court issued an order explaining that it appeared that petitioner had failed to exhaust Grounds Two and Three of the petition by presenting them to the California Supreme Court. Because the petition appeared to be mixed, petitioner was provided four options: (1) filing a notice of exhaustion, (2) withdrawing the unexhausted claims and proceeding on the basis of the remaining claim, (3) dismissing the petition without prejudice, or (4) seeking a stay of the petition so that he could exhaust his state remedies. In addition, the Court advised petitioner that failure to respond to the order would be deemed his consent to dismissal of the petition without prejudice. Petitioner's response to the order was due on June 23,

1 2010. As of the date of this memorandum and order, petitioner has  
2 failed to either file a response or request additional time within  
3 which to do so.

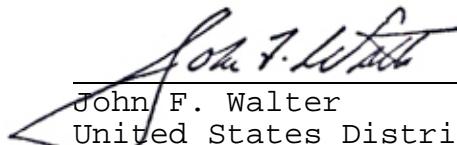
4 "An application for a writ of habeas corpus on behalf of a person  
5 in custody pursuant to the judgment of a State court shall not be  
6 granted unless it appears that the applicant has exhausted the  
7 remedies available in the courts of the State." 28 U.S.C. §  
8 2254(b)(1)(A); see Duncan v. Henry, 513 U.S. 364, 365 (1995)(per  
9 curiam). The exhaustion requirement is satisfied when the substance  
10 of a petitioner's federal claim has been fairly presented to the  
11 state's highest court. Baldwin v. Reese, 541 U.S. 27, 29 (2004);  
12 Wooten v. Kirkland, 540 F.3d 1019, 1025 (9th Cir. 2008).

13 As explained in the June 2, 2010 order, petitioner presented only  
14 one claim to the California Supreme Court in his petition for review.  
15 [Petition at 2-3]. Grounds Two and Three of this petition were not  
16 included in petitioner's petition for review filed in the California  
17 Supreme Court, and petitioner did not file any other petition with the  
18 highest state court. Accordingly, petitioner has failed to exhaust  
19 his state remedies, and the petition is dismissed without prejudice to  
20 its refiling after petitioner exhausts his state remedies.

21 IT IS SO ORDERED.

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23 Dated: July 29, 2010

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26 John F. Walter  
27 United States District Judge  
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